NA 04-0242-C H/H Farthing v Barnhart
Judge David F. Hamilton Signed on 10/3/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

LILLIAN FARTHING,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 4:04-cv-00242-DFH-WGH
	)	
JO ANNE B.	)	
BARNHART,COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

LILLIAN M. FARTHING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 4:04-cv-0242-DFH-WGH
	)	
JO ANNE B. BARNHART, Commissioner of the Social Security Administration,	)	
	)	
Defendant.	)	

ENTRY ON JUDICIAL REVIEW

Plaintiff Lillian M. Farthing seeks judicial review of a decision by the Commissioner of Social Security denying her application for disability insurance benefits under the Social Security Act. Acting for the Commissioner, an Administrative Law Judge ("ALJ") determined that Ms. Farthing was not disabled within the meaning of the Social Security Act because she could perform her past work as a medical receptionist and unit secretary. The ALJ found, contrary to the opinions of two treating physicians, that Ms. Farthing's condition would not interfere with her ability to perform semi-skilled, sedentary work. As explained below, this case must be remanded because the ALJ failed to build a logical bridge between the evidence and this critical finding.

Background

Plaintiff Lillian M. Farthing was 49 years old in 2004 when the ALJ found her ineligible for disability insurance benefits under the Social Security Act. Ms.

Farthing completed high school and some college courses. She has worked as a medical receptionist, unit secretary, pharmacy technician, day care worker, quality assurance worker in a factory, and customer service employee. Ms. Farthing claimed to suffer from pernicious anemia, undifferentiated connective tissue disease, chronic pain, depression, insomnia, chronic fatigue, arthritis, and irritable bowel syndrome. Ms. Farthing claimed that these impairments disabled her, within the meaning of the Social Security Act, after May 1, 2002. R. 17.

Ms. Farthing's primary care physician has been Dr. McKinney. Dr. McKinney's records indicated that Ms. Farthing presented muscle strain and pain and tenderness with palpation as early as February 2001. R. 273. Ms. Farthing made several more visits to Dr. McKinney throughout 2001 and early 2002. For some of these examinations, Dr. McKinney noted impressions of "possible" or "questionable" connective tissue disorder. R. 257, 258, 262.

Dr. McKinney referred Ms. Farthing to a rheumatologist, Dr. Sisay. Dr. Sisay first evaluated Ms. Farthing in October 2001 and found that she had full range of motion and walked comfortably, with no signs of acute pain or distress. She exhibited no symptoms suggestive of proximal muscle weakness. R. 308-10. Ms. Farthing continued to visit Dr. Sisay and presented consistent complaints about pain to him. Although initial laboratory tests suggested an autoimmune disorder, later test results were within normal range. In June 2003, Dr. Sisay diagnosed Ms. Farthing with undifferentiated connective tissue disease and

fibromyalgia, but he found no swelling of her joints. He stated that she had multiple tender points on classic sites, consistent with fibromyalgia. R. 284.

Ms. Farthing also saw Dr. Gislason for gastrointestinal complaints. In July 2001, testing showed "significantly elevated" delayed gastric emptying. R. 196. In September 2001, Dr. Gislason stated his belief that Ms. Farthing suffered from irritable bowel syndrome with gastroparesis. Dr. Gislason also noted that Ms. Farthing's symptoms of abdominal bloating and discomfort seemed to taper only while she was taking Prednisone for joint problems. R. 189.

Ms. Farthing's treating physicians have referred her to several research hospitals for evaluation. In January 2002, Ms. Farthing saw a rheumatologist at Vanderbilt University who concluded that it was "unclear what rheumatologic diagnosis she has." R. 396. However, he noted proximal muscle weakness and extreme tenderness of most her muscles. R. 392. In June 2002, Dr. McKinney referred Ms. Farthing to Indiana University Medical Center in Indianapolis for evaluation. The doctor there stated that Ms. Farthing was "likely to have fibromyalgia and also allodynia." R. 162.

In March 2003, Ms. Farthing saw Dr. Ginsburg, a rheumatologist at the Mayo Clinic in Jacksonville, Florida. Dr. Ginsburg requested neurological and GI consultations. The neurologist, Dr. Johnson, found no indication of weakness but noted that all trigger points were positive to the touch for pain. She stated that

Ms. Farthing was able to walk on her heels and toes and to stand from a seated position without bracing herself. R. 200-01. Dr. Scolapio performed the GI consultation. He believed that Ms. Farthing suffered from irritable bowel syndrome and that Demerol was contributing to her delayed gastrointestinal motility and abdominal bloating. R. 205. Dr. Ginsburg concluded that Ms. Farthing had multiple tender points "in the distribution of fibromyalgia" but could not diagnose an underlying connective tissue disease. R. 209-11. In his notes for Ms. Farthing's return visit on March 27th, however, Dr. Ginsburg stated that she did have fibromyalgia. R. 397.

Ms. Farthing continued visiting Dr. McKinney. From April 2002 until June 2003, Dr. McKinney consistently noted Ms. Farthing's complaints of joint and muscle pain. His impressions ranged from "ongoing myalgia complaints" to "significant myalgic pain of uncertain etiology" to "severe myalgia." R. 255. In a March 14, 2003 letter to the agency, Dr. McKinney stated that Ms. Farthing's physical findings were "essentially unremarkable except for widespread muscle tenderness" and that she was functioning with a fibromyalgia diagnosis. In a June 13, 2003 letter to the agency, Dr. McKinney stated that physical findings were limited to muscle aches and pains with palpation and a painful range of motion of all joints involved. He also noted that her pain medication, Demerol, impaired her concentration. R. 234.

Dr. McKinney assessed Ms. Farthing's physical capacity on June 14, 2003. He wrote that Ms. Farthing could sit or stand/walk less than 1 hour per day; she could use her hands for simple grasping and fine manipulation; she could lift 5 pounds frequently and up to 10 pounds occasionally; and she could never climb, stoop, or crouch. He ranked her pain as severe. R. 231-33. Dr. Sisay assessed Ms. Farthing's physical capacity on June 10, 2003. He wrote that Ms. Farthing could sit or stand/walk for 2 hours per day and could reach above shoulder level only occasionally. He rated her pain as moderate. In all other respects, Dr. Sisay's assessment was similar to Dr. McKinney's. R. 286-88.

Ms. Farthing applied for disability insurance benefits on August 19, 2002. At that time, she completed a disability report listing her conditions and symptoms. She reported joint and muscle pain that limited her walking, sitting, and standing to very short periods of time. R. 63. She also reported feeling very weak and occasionally falling. *Id.*

Two agency consultants examined Ms. Farthing in October 2002. Dr. Sanders performed a physical examination. He noted that Ms. Farthing appeared to be in a lot of pain with simple movements. He stated that Ms. Farthing had 2/5 grip strength and 3-4/5 muscle strength. Dr. Sanders also stated that she could not walk heel to toe and had very poor fine motor skills. R. 165-66. Dr. Fink conducted a consultative psychological evaluation on Ms. Farthing. He diagnosed depressive disorder, with mild symptoms. Dr. Fink stated that Ms. Farthing

reported no basic difficulty with her daily activities, which included managing virtually all household tasks and looking after her disabled husband. R. 169.

On November 21, 2002, Dr. Lopez, a state agency physician, completed a physical residual functional capacity assessment for Ms. Farthing based on an examination of her medical records, but without examining her himself. He determined that Ms. Farthing could lift and/or carry 20 pounds occasionally and 10 pounds frequently; that she could sit, stand, or walk for "about 6 hours in an 8-hour workday"; and that her pushing or pulling abilities were unlimited to the extent of her lifting and carrying abilities. R. 123-32.

On January 22, 2003, Ms. Farthing filed a reconsideration disability report and noted negative changes in her symptoms since filing her original disability claim. She described her condition as "weaker" and claimed that her pain was "constant, making it hard to concentrate on anything." R. 92. In a March 11, 2003 daily activities questionnaire, Ms. Farthing reported difficulty getting out of chairs and vehicles and difficulty walking without falling. R. 98-100.

On April 8, 2003, the Social Security Administration denied Ms. Farthing's application for disability insurance benefits, finding that her condition should not prevent her from doing light work. R. 25-27. Her application was also denied upon reconsideration. R. 34. Ms. Farthing filed her request for a hearing before an ALJ on May 23, 2003. R. 36. Ms. Farthing and Thomas D. Mehaffey, a

vocational expert, testified before ALJ Anne C. Pritchett on March 9, 2004. R. 424-50. The ALJ issued her decision denying benefits on April 16, 2004. See R. 16-22. Because the Appeals Council denied further review of the ALJ's decision, R. 4, the ALJ's decision is treated as the final decision of the Commissioner. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994).

Ms. Farthing filed a timely petition for judicial review. The court has jurisdiction in this matter under 42 U.S.C. § 405(g).

The Disability Standard

To be eligible for disability insurance benefits, a claimant must establish that she suffers from a disability within the meaning of the Social Security Act. To prove disability under the Act, the claimant must show that she was unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that could be expected to result in death or that has lasted or could be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d). Ms. Farthing was disabled only if her impairments were of such severity that she was unable to perform work that she had previously done and if, based on her age, education, and work experience, she also could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work was actually available to her. *Id.*

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are:

(1 Has the claimant engaged in substantial gainful activity? If so, she was not disabled.

(2) If not, did the claimant have an impairment or combination of impairments that are severe? If not, she was not disabled.

(3) If so, did the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant was disabled.

(4) If not, could the claimant do her past relevant work? If so, she was not disabled.

(5) If not, could the claimant perform other work given her residual functional capacity, age, education, and experience? If so, then she was not disabled. If not, she was disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step. *Zurawski v. Halter*, 245 F.3d 881, 886 (7th Cir. 2001).

Standard of Review

If the Commissioner's decision is supported by substantial evidence, it must be upheld by a reviewing court. 42 U.S.C. § 405(g); *Maggard v. Apfel*, 167 F.3d 376, 379 (7th Cir. 1999). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Diaz v. Chater*, 55 F.3d 300, 305 (7th Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court

reviews the record as a whole, but does not attempt to substitute its judgment for the ALJ's judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Luna*, 22 F.3d at 689. "Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits," the court must defer to the Commissioner's resolution of that conflict. *Binion v. Chater*, 108 F.3d 780, 782 (7th Cir. 1997). Although the ALJ need not provide a complete written evaluation of every piece of testimony and evidence, *Diaz*, 55 F.3d at 308; accord, *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005), a remand may be required if the ALJ has failed to "build a logical bridge from the evidence to his conclusion." *Steele v. Barnhart*, 290 F.3d 936, 941 (7th Cir. 2002).

Discussion

Applying the five-step process, the ALJ found that Ms. Farthing satisfied steps one and two: she was not currently working and she had severe impairments including irritable bowel syndrome with delayed gastric emptying, osteopenia, depression, degenerative disc disease of the cervical spine, and chronic pain. At step three, the ALJ found that Ms. Farthing failed to demonstrate that any of her severe impairments met or equaled a listed impairment. At step four, the ALJ found that Ms. Farthing failed to demonstrate that any of her severe impairments prevented her from performing her past work as a medical receptionist and unit secretary. Based on these findings, the ALJ concluded that Ms. Farthing was not disabled under the Social Security Act. R. 21.

Ms. Farthing challenges the ALJ's step-four finding that she retained the ability to perform work as a medical receptionist or unit secretary. Ms. Farthing argues that the ALJ's finding was not supported by substantial evidence because the ALJ (1) failed to recognize her fibromyalgia diagnosis and then improperly focused on the lack of objective evidence; (2) failed to consider the proper factors in evaluating her testimony; and (3) failed to account for her non-exertional impairments in determining her residual functional capacity.

The court finds that the ALJ failed to provide adequate reasons supporting her decisions to discount the treating physicians' opinions and to discredit Ms. Farthing's testimony. Because each issue independently requires remand, the court does not reach Ms. Farthing's remaining argument.

I. *Fibromyalgia and the Treating Physicians' Opinions*

A treating physician's opinion regarding the nature and severity of a claimant's medical condition is entitled to controlling weight if well-supported by medically acceptable techniques and not inconsistent with the other substantial evidence in the record. *Skarbek v. Barnhart*, 390 F.3d 500, 503 (7th Cir. 2004); 20 C.F.R. § 404.1527(d)(2). If an ALJ chooses to discount the opinion of a treating physician, such a decision must be based on medical evidence or authority in the record and may not amount to simply the substituted judgment of the ALJ. *Clifford v. Apfel*, 227 F.3d 863, 870 (7th Cir. 2000); *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996). Generally, more weight is given to the opinion of treating

physicians because of their greater familiarity with the claimant's conditions and circumstances. See *Clifford*, 227 F.3d at 870; 20 C.F.R. § 404.1527(d)(2) (noting that treating physicians are likely "most able to provide a detailed, longitudinal picture of [your] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations"). At the same time, the ALJ must keep in mind the biases that a treating physician may bring to the disability evaluation of his or her own patient. *Dixon v. Massanari*, 270 F.3d 1171, 1177 (7th Cir. 2001).

The ALJ did not identify substantial evidence to support her decision to set aside Dr. McKinney's and Dr. Sasay's opinions regarding Ms. Farthing's condition and its limiting effects. Both Dr. McKinney and Dr. Sasay concluded that there was a reasonable medical basis for Ms. Farthing's symptoms of pain, describing her condition as "fibromyalgia" and "diffuse joint pain and swelling with multiple tender points," respectively. See R. 233, 288. Both physicians consistently noted Ms. Farthing's tenderness upon palpation and her gastrointestinal problems over of a period of more than two years. Dr. McKinney in particular documented a worsening of Ms. Farthing's condition and described her long-term prognosis as poor. R. 234. These opinions were consistent with that of the consulting examiner, Dr. Sanders. R. 165-67.

In *Sarchet v. Chater*, the Seventh Circuit remanded a case involving alleged disability on the basis of fibromyalgia. 78 F.3d 305 (7th Cir. 1996). The ALJ had concluded that the claimant was not disabled, but the court reversed based on several errors. One important error was that the ALJ had "depreciated the gravity of Sarchet's fibromyalgia because of the lack of any evidence of objectively discernible symptoms, such as a swelling of the joints." *Id.* at 307. The court rejected the ALJ's reasoning: "Since swelling of the joints is not a symptom of fibromyalgia, its absence is no more indicative that the patient's fibromyalgia is not disabling than the absence of headache is an indication that a patient's prostate cancer is not advanced." *Id.*

Similarly, the ALJ in this case gave no weight to the opinions of two treating physicians solely because she concluded that they were not "well supported by objective evidence," and she noted the "lack of significant objective findings on examination." R. 20. As in *Sarchet*, this reasoning mistakenly assumes that the claimant's physicians could present objective medical findings if confronted with a situation of legitimately disabling fibromyalgia. As the *Sarchet* court explained, there are no laboratory tests for the presence or severity of fibromyalgia, and its principal discernible symptom is multiple trigger points for pain. See *Sarchet*, 78 F.3d at 306. Dr. McKinney, along with other physicians, continuously reported that Ms. Farthing exhibited pain upon palpation of those trigger points. See, *e.g.*, R. 235, 237-38, 241, 243-50, 252, 253, 254, 255, 257, 266, 267, 268, 273. By dismissing the treating physicians' opinions wholesale, and citing a lack of

objective findings as the only justification, the ALJ exhibited a misunderstanding of Ms. Farthing's condition.

The Commissioner argues that *Sarchet* does not support the claimant's position because the ALJ in this case acknowledged that fibromyalgia was a medically determinable impairment, but simply disagreed that its symptoms (combined with those of other impairments) were disabling for Ms. Farthing. It is not at all clear that the ALJ accepted Ms. Farthing's fibromyalgia diagnosis. Rather than addressing the physicians' working diagnosis of fibromyalgia, the ALJ's decision sought only to discredit Ms. Farthing's complaints of "chronic pain." This distinction is made clear by the ALJ's focus with the lack of objective test results, despite the fact that fibromyalgia is often diagnosed after a history of negative laboratory testing has ruled out other disorders. The ALJ must consider objective test results, of course, but the absence of confirming test results simply is not evidence that contradicts an otherwise well-supported diagnosis by treating physicians. Rejecting Ms. Farthing's fibromyalgia diagnosis, in light of the well-documented, long-term findings by her physicians, and without citing any contradictory medical report or opinion, amounts to "playing doctor" in this situation. See *Clifford*, 227 F.3d at 870 ("an ALJ must not substitute his own judgment for a physician's opinion without relying on other medical evidence or authority in the record"); *Rohan*, 98 F.3d at 971 ("ALJs must not succumb to the temptation to play doctor and make their own medical findings").

Further, the regulations grant deference to a treating physician's opinion about not only the nature of the claimant's impairment but also its severity. See 20 C.F.R. § 404.1527(d)(2). The ALJ's improper focus on the absence of objective medical findings led her to also disregard physician opinions about the severity of Ms. Farthing's condition. Both Dr. McKinney and Dr. Sisay found that Ms. Farthing's impairment was so severe as to impose limits on her activities that were not consistent with full-time work. Dr. Sanders' examination of Ms. Farthing supported their conclusion. See R. 165 ("I do not think the patient should do any prolonged physical activity. . . . She is in chronic pain and has frequent falls."). The ALJ nevertheless discredited these opinions about the severity of Ms. Farthing's fibromyalgia out of hand because of the lack of objective medical data.

Because the ALJ discredited these physicians' opinions, it is unclear on whose authority she relied in making her findings about Ms. Farthing's medical condition. As one example, the ALJ found that Ms. Farthing could sit at least 6 hours per day. Dr. McKinney's and Dr. Sisay's RFC assessments rated Ms. Farthing incapable of doing so. Dr. Sander's notes also indicate that Ms. Farthing could probably not meet this requirement. Dr. Fink, the other state examining physician, did not perform an RFC assessment of Ms. Farthing.

The only evidence in the record potentially supporting the ALJ's finding is the RFC assessment form completed by two state agency medical consultants. In it, the physicians rated Ms. Farthing capable of sitting 6 hours per day. R. 126.

The opinions of non-examining physicians, however, cannot constitute substantial evidence if contradictory treating or examining physician evidence is in the record. See *Gudgel v. Barnhart*, 345 F.3d 467, 470 (7th Cir. 2003) (per curiam). Further, the ALJ did not in fact rely on the medical consultants' opinion – she expressly gave it "little weight" because she believed that it did not fully assess the records of Ms. Farthing's treating physicians. The ALJ's finding that Ms. Farthing could sit 6 hours per day simply is not supported by substantial evidence.

A treating physician's medical opinion does not merit controlling weight unless it is both well-supported by medically acceptable clinical and laboratory diagnostic techniques and not inconsistent with other substantial evidence on the record. 20 C.F.R. § 404.1527(d)(2). In this case, the ALJ cited the lack of "objective medical evidence" as the sole reason for dismissing Dr. McKinney's and Dr. Sasay's opinions about Ms. Farthing' s limitations. This reason appears to go to the first requirement only. The ALJ did not address whether the doctors' opinions were consistent with other evidence in the record. Because the ALJ failed to identify substantial evidence supporting her decision to discredit the treating physicians' opinions, her decision must be remanded for further consideration.[1]

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[1]Even if the record contained sufficient evidence to support a finding of inconsistency, the ALJ's decision could not be upheld where "the reasons given by the trier of fact do not build an accurate and logical bridge between the evidence and the result." *Sarchet*, 78 F.3d at 307; accord, *Steele*, 290 F.3d at 941. Principles of administrative review require that this court confine its review to the reasons articulated by the ALJ. *Golembiewski v. Barnhart*, 322 F.3d 912, 916 (7th (continued…)

II. *The Claimant's Credibility*

The ALJ also found Ms. Farthing's testimony regarding the extent to which her impairments limited her functional capacity to be "less than fully credible." Specifically, she found her testimony to be "exaggerated" and "inconsistent with the objective evidence." The ALJ also cited the lack of objective medical evidence as a reason for discrediting Ms. Farthing's testimony. R. 20. Because a claimant's testimony may not be discredited solely for a lack of objective evidence, and the ALJ identified no meaningful inconsistencies in Ms. Farthing's testimony about her pain, the credibility finding cannot be upheld.

Because hearing officers have the unique opportunity to observe a witness and to evaluate a witness's forthrightness, courts generally afford such officers' credibility determinations substantial deference. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000). An ALJ's credibility finding will not be disturbed unless it is "patently wrong." *Imani v. Heckler*, 797 F.2d 508, 512 (7th Cir. 1986); see also *Diaz,* 55 F.3d at 308. However, where credibility determinations are based on "objective factors or fundamental implausibilities," a reviewing court has greater

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[1](...continued)
Cir. 2003); *Steele*, 290 F.3d at 941. In addition, even when a treating physician's opinion does not merit controlling weight, the ALJ must still consider the length of the treatment relationship and frequency of examination, the nature and extent of the treatment relationship, the medical evidence supporting the opinion, the physician's specialization in the medical areas at issue, and other factors that tend to support or contradict the opinion, in determining how much weight to grant the opinion. See 20 C.F.R. § 404.1527(d)(2). The ALJ did not articulate her consideration of these factors.

freedom to review the ALJ's decision. *Herron v. Shalala*, 19 F.3d 329, 335 (7th Cir. 1994).

The Commissioner has established regulations pertaining to the proper evaluation of symptoms (*i.e.*, the claimant's own descriptions of her impairments). The ALJ must consider all of the claimant's statements about her symptoms, including pain, and determine the extent to which those symptoms can reasonably be accepted as consistent with the objective medical evidence. 20 C.F.R. § 404.1528. The ALJ can discount subjective complaints that are inconsistent with the evidence as a whole, but cannot discount complaints merely because they are not supported by objective medical evidence. "The absence of objective medical evidence is just one factor to be considered along with: (a) the claimant's daily activities; (b) the location, duration, frequency and intensity of pain; (c) precipitating and aggravating factors; (d) type, dosage, effectiveness and side effects of medication; (e) treatment other than medication; (f) any measures the claimant has used to relieve the pain or other symptoms; and, (g) functional limitations and restrictions." 20 C.F.R. § 404.1529(c)(3); accord, *Carradine v. Barnhart*, 360 F.3d 751, 753 (7th Cir. 2004); *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995). The ALJ must determine the extent to which the claimant's symptoms affects her ability to perform work, taking into account the claimant's statements about the intensity, persistence, and limiting effects of her symptoms. See 20 C.F.R. § 404.1529(c)(4). Social Security Ruling 96-7p offers more specific

guidance for assessing the credibility of an individual's symptoms under the regulations.

To support the finding that Ms. Farthing was not credible regarding the extent of her limitations, the ALJ cited several supposed inconsistencies in the record. First, the ALJ stated that Ms. Farthing's allegations of weakness were not corroborated by either her treating physicians or physicians at the Mayo Clinic. The ALJ noted that a Mayo Clinic neurologist described Ms. Farthing as able to walk on her heels and toes, contradicting Ms. Farthing's statements. The ALJ also stated that there were no objective findings supporting swelling, a limited ability to sit or stand, or the inability to lift a gallon of milk. Finally, the ALJ stated that Ms. Farthing's ranking of her pain at "15" on a 10-point scale was "clearly exaggerated." R. 20.

The ALJ's decision to discount Ms. Farthing's testimony about the limiting effects of her weakness, mobility impairment, and swelling was not patently wrong. The record indicates that Ms. Farthing's physicians did not observe these symptoms at every visit. For example, Dr. McKinney noted swelling of her knees, ankles, and eyelids in April 2002, while Dr. Sisay's notes from May 2002 suggest that the swelling had by then ceased. See R. 254, 309. It is unclear whether a patient suffering from fibromyalgia could experience these symptoms with varying day-to-day severity, but the ALJ was entitled to discount Ms. Farthing's testimony on these issues if she found it inconsistent with the record as a whole.

However, the ALJ failed to cite any evidence inconsistent with Ms. Farthing's primary complaint that constant pain limited her daily functioning so much that she could not engage in full-time work. Ms. Farthing testified that she could not sit or stand for much more than five minutes because even sitting hurt and caused her hips to feel like they were "popping out of joint." R. 434. She claimed that she lay down frequently since that position was the most comfortable. *Id.* She also testified to taking pain medications, like Neurontin and sometimes Demerol, that made her drowsy. R. 433.

The ALJ failed to address the credibility of Ms. Farthing's testimony about her pain beyond the general statement that her allegations, similar to her physicians' testimony, suffered from a "lack of objective evidence." R. 20. As discussed above, however, fibromyalgia is characterized by a frustrating lack of objective evidence. See *Sarchet*, 78 F.3d at 306 ("Its cause or causes are unknown, there is no cure, and . . . its symptoms are entirely subjective."). Under the regulations, the absence of objective medical evidence is not dispositive, but is only one factor for consideration. See 20 C.F.R. § 404.1529(c)(3). The ALJ was required to consider all relevant factors in assessing Ms. Farthing's testimony about the ways in which pain limited her ability to hold gainful employment.

In addition, Ms. Farthing's ranking her pain at "15" on a 10-point scale does not, on its own, establish that her testimony is "clearly exaggerated" or inconsistent with other evidence. At most, it demonstrates that her answer was

unresponsive to the question posed, and that she was frustrated and exasperated with her pain.

This court cannot rule out the possibility that on remand the record might still support the ALJ's ultimate conclusion that Ms. Farthing was not disabled. However, even if the record were to contain sufficient evidence to support the ALJ's decision to discredit Ms. Farthing's testimony about the limiting effects of her pain, once again, that decision cannot be upheld where "the reasons given by the trier of fact do not build an accurate and logical bridge between the evidence and the result." *Sarchet*, 78 F.3d at 307; accord, *Steele*, 290 F.3d at 941. Because the ALJ failed to build an accurate and logical bridge in her analysis, the adverse credibility finding cannot stand.

Conclusion

The ALJ's finding at step four is not supported by substantial evidence for two independent reasons, both stemming from a failure to consider the disabling effects of Ms. Farthing's fibromyalgia. First, the ALJ did not identify sufficient evidence to support her decision to set aside the opinion of Dr. McKinney and Dr. Sisay regarding the severity of Ms. Farthing's impairments. Second, the ALJ failed to explain her decision to discount Ms. Farthing's testimony regarding her limitations from pain. As a result, the ALJ's determination that Ms. Farthing was able to perform her past relevant work is unreliable because it is based on a degree of functional capacity that lacks substantial support in the record.

Accordingly, the decision of the ALJ is reversed and remanded for reconsideration consistent with this entry. On remand, all steps of the five-step sequential evaluation are subject to reconsideration. Final judgment shall be entered consistent with this entry.

So ordered.

Date: October 3, 2005

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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